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SENATE

REPORT
98-402

DECLARING CERTAIN LANDS HELD BY THE SENECA NATION OF INDIANS TO BE PART OF THE ALLEGHENY RESERVATION IN THE STATE OF NEW YORK

APRIL 18, 1984.—Ordered to be printed

Filed under authority of the order of the Senate of April 13 (legislative day, March 26), 1984

Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 2061]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2061) to declare certain lands held by the Seneca Nation of Indians to be part of the Allegany Reservation in the State of New York, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 2061 is to declare that certain lands acquired by the Seneca Nation of Indians of the State of New York be part of the Allegany Reservation in the State of New York and have the status of tribal lands for purposes of Federal law.

BACKGROUND

The Seneca Nation of Indians is one of the constituent tribes of the Six Nations of the Iroquois Confederacy and is located on two reservations in southwestern New York: the Allegany Reservation in Cattaraugus County and the Cattaraugus Reservation in Cattaraugus, Erie, and Chautauqua Counties. In addition, the tribe has two small landholdings known as the Oil Springs Reservation in New York and the Cornplanter Reservation in Pennsylvania.

In 1971, the New York State Department of Transportation attempted to condemn an easement through the Allegany Reservation for the construction of the Southern Tier Expressway, pursuant to New

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York law. The tribe informed the State that it would not voluntarily consent to the easement unless lands within the reservation needed for the highway were replaced with lands immediately adjacent to the reservation on an acre-for-acre basis. The tribe also filed suit contesting the State's authority to condemn land within the reservation. In 1975, a Federal district court ruled that Federal law (25 U.S.C. 177) insulated the reservation of lands from State condemnation, *Seneca Nation of Indians* v. *State of New York*, 397 F. Supp. 685.

Acting pursuant to section 8 of the act of February 19, 1875 (18 Stat. 330), the tribe granted the State an easement over approximately 795 acres within the Allegany Reservation for the construction of the highway. In partial consideration of this easement, the State acquired and conveyed to the tribe two tracts of land, comprising approximately 800 acres and recognized those lands as part of the Allegany Reservation.

In 1982, after receiving the deed to the second piece of property from the State, the tribe requested the Secretary of the Interior to recognize and declare the two tracts of land as part of the Allegany Reservation. The Deputy Assistant Secretary for Indian Affairs, by letter dated July 7, 1982, denied the tribe's request on the grounds that the Secretary did not have the statutory authority to do so. The only statutory authority for the Secretary to proclaim new reservations or add lands to existing reservations is section 7 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 467). The Seneca Nation is not organized under the Indian Reorganization Act, and thus, section 7 does not apply to it. The letter did advise the tribe that since the State had declared these lands as part of the Allegany Reservation, the Bureau of Indian Affairs would regard the land as "reservation" for purposes of the regulations in title 25, Code of Federal Regulations.

The Seneca Nation of Indians would like the security of having the replacement lands formally made a part of the reservation. H.R. 3555 would carry out the intent of the agreement between the State of New York and the Seneca Nation and would assure that these lands, and any persons thereon, are treated by the State and Federal agencies in the same fashion as lands or persons within the remainder of the Seneca Reservation.

SECTION-BY-SECTION ANALYSIS

Section 1

Subsection (a) provides certain lands owned by the Seneca Nation of Indians are to be part of the Allegany Reservation in the State of New York and to have the status of tribal lands for purposes of Federal law.

Subsection (b) describes the lands referred to in subsection (a) as:

(1) Approximately 795 acres of land acquired by the tribe from the State of New York, Department of Transportation, pursuant to a deed dated September 2, 1981, in the town of Red House, County of Cattaraugus, State of New York, and

(2) Approximately 5 acres of land acquired by the tribe from the State of New York Department of Transportation, pursuant to a deed dated February 26, 1982, in the town of Cold Spring, County of Cattaraugus, State of New York.

COST AND BUDGET ACT COMPLIANCE AND INFLATIONARY IMPACT STATEMENT

The enactment of S. 2061 will result in no cost to the United States and will have no inflationary impact. The analysis of the Congressional Budget Office follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 12, 1984.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2061, a bill to declare certain lands held by the Seneca Nation of Indians to be part of the Allegany Reservation in the State of New York, as ordered reported by the Senate Select Committee on Indian Affairs, April 9, 1984.

The Congressional Budget Office has determined that enactment of this bill would not result in any additional costs to either the Federal Government or State and local governments in the area. The act would legally incorporate land acquired by the Senecas in trade with the State of New York into the Allegany Reservation. This recognition would remove any uncertainty about reservation status that may arise over a land transfer that was made in 1973.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The committee believes that S. 2061 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATION

The Select Committee on Indian Affairs has not received a formal legislative report from the Department of the Interior. At hearings on this bill, the Department supported enactment without amendment. The statement of the Department follows:

STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY OF THE INTERIOR FOR INDIAN AFFAIRS, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE, ON S. 2061, A BILL TO DECLARE CERTAIN LANDS HELD BY THE SENECA NATION OF INDIANS TO BE PART OF THE ALLEGANY RESERVATION IN THE STATE OF NEW YORK, MARCH 8, 1984

Mr. Chairman and members of the committee, I am pleased to have the opportunity to present the views of the Department of the Interior on S. 2061, a bill to declare certain lands held by the Seneca Nation of Indians to be part of the Allegany Reservation in the State of New York.

We recommend the enactment of S. 2061.

If enacted, S. 2061 would declare that approximately 800 acres of tribal land located in Cattaraugus County, N.Y., to be part of the Allegany Reservation and that such lands shall have the status of tribal lands for purposes of Federal law.

The subject lands were acquired by the Seneca Nation from the State of New York as replacement lands for the tribal lands which were utilized by the New York State Department of Transportation for the Southern Tier Expressway which was constructed in the early 1970's.

The tribe has attempted to have the subject lands added to their existing reservation administratively. However, it has been determined that the Secretary of the Interior lacks the statutory authority to do so. The primary authority for adding lands to an Indian reservation is section 7 of the Indian Reorganization Act of 1934 (48 Stat. 986; 25 U.S.C. 467). Since the Seneca Tribe, on June 10, 1935, rejected the provisions of the Indian Reorganization Act, it does not fall under its provisions. Thus, the need for legislation.

This concludes my prepared statement, I shall be pleased to respond to any questions the committee may have.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the committee notes that no changes in existing law are made by S. 2061.

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